DEFENSE AUTHORIZATION/National Missile Defense Delay

SUBJECT: **National Defense Authorization Act for fiscal year 1996 . . . S. 1026. Thurmond motion to table the Levin amendment No. 2088.**

ACTION: MOTION TO TABLE AGREED TO, 51-49

SYNOPSIS: As reported, S. 1026, the National Defense Authorization Act for fiscal year 1996, will authorize $264.7 billion in total budget authority for the Department of Defense, national security programs of the Department of Energy, civil defense, and military construction accounts. This amount is $7 billion more than requested ($5.3 billion more for procurement and $1.7 billion more for research and development), and is $2.6 billion less than the amount approved in the House-passed bill.

The Levin amendment would strike sections 233(2), 237(a)(2), and 238, which pertain to national missile defenses. Section 233(2) will make it the policy of the United States to deploy a multiple-site national missile defense system that (A) is highly effective against limited ballistic missile attacks on the territory of the United States, and (B) will be augmented over time to provide a layered defense against larger and more sophisticated ballistic missile threats. Section 237(a)(2) will express the sense of the Congress that "the President should cease all efforts to modify, clarify, or otherwise alter United States obligations under the ABM Treaty" pending the outcome of a Senate review of the treaty. Section 238 will provide that unless and until a missile defense or air defense system, system upgrade, or system component is flight tested in an ABM-qualifying flight test, it will not be considered to have been tested in an ABM mode nor will it be considered to have been given capabilities to counter strategic ballistic missiles, and it will therefore not be subject to any application, limitation, or obligation under the ABM Treaty. Further, that section will prohibit the Federal Government from expending funds to restrict in any way the development and deployment of a national missile defense system except to the extent that such development and deployment is subject to the ABM Treaty as defined above. Finally, it will define an ABM-qualifying flight test as a test against a ballistic missile which exceeds a range of 3,500 kilometers and which exceeds a velocity of 5 kilometers per second.

Debate was limited by unanimous consent. Following debate, Senator Thurmond moved to table the Levin amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

(See other side)

YEAS (51)

Republicans (50 or 93%)		Democrats (1 or 2%)
Abraham	Hutchison	Hollings
Ashcroft	Inhofe	
Bennett	Kempthorne	
Bond	Kyl	
Brown	Lott	
Burns	Lugar	
Campbell	Mack	
Coats	McCain	
Cochran	McConnell	
Cohen	Murkowski	
Coverdell	Nickles	
Craig	Packwood	
D'Amato	Pressler	
DeWine	Roth	
Dole	Santorum	
Domenici	Shelby	
Faircloth	Simpson	
Frist	Smith	
Gorton	Snowe	
Gramm	Specter	
Grams	Stevens	
Grassley	Thomas	
Gregg	Thompson	
Hatch	Thurmond	
Helms	Warner	

NAYS (49)

Republicans (4 or 7%)	Democrats (45 or 98%)	
Chafee	Akaka	Inouye
Hatfield	Baucus	Johnston
Jeffords	Biden	Kennedy
Kassebaum	Bingaman	Kerrey
	Boxer	Kerry
	Bradley	Kohl
	Breaux	Lautenberg
	Bryan	Leahy
	Bumpers	Levin
	Byrd	Lieberman
	Conrad	Mikulski
	Daschle	Moseley-Braun
	Dodd	Moynihan
	Dorgan	Murray
	Exon	Nunn
	Feingold	Pell
	Feinstein	Pryor
	Ford	Reid
	Glenn	Robb
	Graham	Rockefeller
	Harkin	Sarbanes
	Heflin	Simon
		Wellstone

NOT VOTING (0)

Republicans (0)	Democrats (0)

EXPLANATION OF ABSENCE:
1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

Those favoring the motion to table contended:

The Levin amendment would strike the most important elements from the Missile Defense Act. The purpose of the Act is to require the United States to develop and deploy a strategic (national) limited ABM system and to develop and deploy effective tactical (battlefield) ABM systems. Part of that Act contains very specific language on intent and on definitions. That specific language is to prevent the President of the United States, whom we do not trust, from deliberately misinterpreting this Act or from unilaterally (and we believe unconstitutionally) expanding the ABM Treaty in order to prevent the deployment of theater missile defenses.

We discussed at length the reasons why we believe we need a national missile defense on previous votes (see vote Nos. 350 and 354). We intend to pass laws to require the building of both strategic and tactical ABM systems. The President does not write laws, he implements them. However, we have no confidence that this President will follow congressional intent unless we spell that intent out to the letter.

This charge is serious but we believe accurate. Our concerns are primarily from the President's actions on the ABM Treaty, particularly with regard to tactical weapons. The ABM Treaty is between the United States and the former Soviet Union. Russia has continued to adhere to that treaty since the collapse of the Soviet Union. It was signed in 1972. The treaty restricts the right of each side to build strategic missile defense systems. The purpose is to make sure that each side has inadequate defenses against the other, in order to ensure that if one side launched a preemptive nuclear strike the other side would have enough remaining missiles to launch a devastating counterattack. The treaty, therefore, was to achieve a balance of terror called Mutual Assured Destruction (MAD).

At the time the treaty was negotiated, no country on earth had tactical ballistic missiles. No one even contemplated building them. The ABM Treaty was not intended in any way, shape, or form to deal with tactical missiles. This fact has been confirmed by the negotiators of that treaty, including Henry Kissinger (who incidentally agrees with us that adhering to the ABM Treaty in support of the MAD doctrine is foolish; in his words, "It's nuts to make a virtue out of our vulnerability.") The intent was not even to block a limited strategic defense--in fact, as first signed, the treaty allowed for two limited strategic defense sites (as later amended, it currently allows for only one site). The intent was to make sure that neither of the superpowers developed the ability to repel a full-scale strategic nuclear attack, because that ability would nullify the MAD balance of power that was used to preserve the peace. Twenty-five years later, over 30 nations have short-range ballistic missiles. Those nations include some of the most belligerent, erratic nations in the world. Five years ago, United States forces suffered casualties from such missiles in the Persian Gulf War. Additionally, 77 nations have cruise missiles (which have flat trajectories).

Nevertheless, it has been apparent from the advent of the Clinton Administration that this President is determined to cover tactical ABM systems under the ABM Treaty. President Clinton wants to make this strategic defense treaty a Theater Missile Defense Treaty (TMD) as well. Specific actions that the Administration has taken include initially accepting a Russian proposal to prohibit deployment of the Navy upper-tier system, which is a battlefield system that would be particularly useful against North Korean missile strikes in the Pacific. The Administration has also been discussing performance limitations for battlefield systems, even though the ABM Treaty does not even set such limits for strategic systems. Last year, Senator Warner sponsored legislation which was adopted by Congress to require the President to come to the Senate for advice and consent as required under the Constitution before agreeing to any major changes to the ABM Treaty. Despite that legislation, the Administration has made it clear to Senators that it intends to agree unilaterally to a demarcation point between strategic and tactical ABM systems. It intends to by itself say that systems with certain characteristics of range and speed qualify as strategic defenses instead of as tactical defenses. We are very worried by this intent. We think President Clinton is likely to come up with an agreement that will cripple our ability to develop effective battlefield defenses against rogue countries like Iraq, North Korea, and Libya. Even President Clinton's own Chairman of the Joint Chiefs of Staff, General Shalikashvili, has publicly expressed concern. For example, he said that our "ongoing TMD efforts--in particular THADD and Navy Upper Tier--have been artificially limited by ABM Treaty considerations." He has also said that the Administration should quit making concessions and should consider "rolling back the U.S. negotiating position."

This description brings us to sections 237(a)(2) and 238, which the Levin amendment would strike. These sections of the Missile Defense Act would establish a demarcation point that we believe is acceptable, and would express the sense of Congress that the President in general should quit trying to make alterations in the ABM Treaty without congressional approval. By signing a demarcation point into law, President Clinton will not be able to capitulate in negotiations and leave our troops defenseless because he will have to bring the results of his negotiations to the Senate for approval as a treaty. Of course, he may still negotiate a worthless agreement, but the Russians will know that the only way it will be adhered to is if it is then approved by the Senate. Without section 238, though, the President will be able to negotiate an "interpretation" of the ABM Treaty that will not be submitted to the Senate and that will be adhered to. Our colleagues, through a tortured reading of section 237, have said that it would stop the President from negotiating. All that section will do is stop him from unilaterally deciding. Section 237 will not stop him from taking any brilliant or stupid negotiating position he wishes--how he conducts foreign policy will be up to him. However, the Senate has a constitutional duty to decide on treaties, and an agreement on battlefield ballistic defenses is clearly an agreement of sufficient import to demand a treaty status.

The other section that the Levin amendment would strike would state that it is the policy of the United States to develop a multi-site strategic ABM system to defend against limited attacks. This policy, with which we adamantly agree, is intended to protect United States citizens from the soon-to-emerge threat that will be posed by radical regimes possessing a few intercontinental ballistic missiles. The threat posed by Saddam Hussein with two or three such missiles will likely prove to be infinitely greater than the threat that was ever posed by the Soviet Union, because, unlike the Soviet Union, he will be very willing and likely to use his missiles preemptorily. He has already fired missiles at U.S. troops, he has fired them at Tel Aviv as a terrorist attack, and he has stated his willingness to fire them on Washington, should he gain that capability. He is studiously working to acquire that capability, as are numerous other despots around the world, and he, like numerous other despots, is also working to acquire weapons of mass destruction. It is very possible that all Americans will be at risk within the next few years from a third-world ballistic missile attack with nuclear warheads. Our policy should be to defend against that developing threat. Many Senators, and we believe this President, unwisely discount the severity of that threat. They do not want to develop a missile defense system; they want only endless research. However, Congress sets the laws. If Congress votes to develop that system, then the President must develop it. Just as we need clear statements to stop President Clinton from subverting congressional intent on tactical defenses, though, we need a clear statement to stop him from subverting congressional intent on strategic defenses. The statement of policy in this bill leaves no doubt as to the point of our research and development efforts because we do not want there to be any possibility of delay or subversion of our deployment timetable.

Some Senators who support the eventual deployment of a multi-site strategic ABM system have objected to this language because if such a system were in effect at this moment it would clearly violate the ABM Treaty. They say that it is an "anticipatory breach" that will cause the Russians to tumble out of every arms control agreement that they have ever signed with the United States. An anticipatory breach is not a breach--only a breach is a breach. If, over the course of the next several years, we do not modify or withdraw from the ABM Treaty, then the development of this system will be a breach. Our colleagues assume for some reason that over the course of the next 8 years it will not occur to us that either we will have to negotiate or withdraw from the treaty. The treaty allows for both options. To withdraw, all that is needed is 6-month's notice.

If it comes down to it, clearly it would be better to withdraw than to give up developing a national defense. Our colleagues tell us that Russia will likely decide to quit dismantling its missiles if we proceed, but we respond that event is likely no matter what. Destroying missiles is expensive and Russia is broke. Further, even if Russia destroys every missile that it has agreed to destroy under START I, and every missile that it would have to destroy if it ever agreed to START II, it would still have enough missiles to destroy the United States. Russia with a few thousand less warheads is only slightly less dangerous. We remind our colleagues, though, that Russia is not that dangerous at all--it is an ally. The countries an ABM system would defend against, though, are very dangerous. Consider the risks: if we build a system, Russia will likely have a few thousand more missiles that it will not use, and the United States will be able to shoot down the few missiles that third-world despots will have and will use; alternatively, if we do not build a system, Russia will be a little more likely to continue destroying its missiles, and thus will have a few thousand less missiles that it will not use, and the United States will be defenseless against the few nuclear missiles that will very likely be fired against it by third-world countries.

Our colleagues need to stop worrying about the ABM Treaty. It is a vestigial, dated remnant of a bipolar world. To the extent that it interferes with United States defense requirements, it must be abandoned. Our people deserve to be protected at home and on the battlefield from ballistic missiles. We oppose efforts by this President and our colleagues to use the ABM Treaty as a means of stopping us from providing that protection. We therefore urge Senators to join us in tabling the Levin amendment.

Those opposing the motion to table contended:

The Levin amendment would strike the most objectionable elements of the Missile Defense Act. All of the research, development, and other practical efforts would continue. Nothing in the Levin amendment would interfere with our colleagues' schedule to develop and deploy strategic and tactical defense systems. Some of us support both of those deployments; some of us support only battlefield defenses; some of us are opposed to the development of both. However, we agree that the language that would be stricken by the Levin amendment is unduly provocative, and that some of it is also clearly unconstitutional.

Specifically, the Levin amendment would strike language stating that it is the policy of the United States to deploy a multiple-site strategic defense, that the President may not take any action on the ABM treaty until Congress has had a chance to review it, and that certain performance characteristics will serve as the demarcation point between strategic and tactical ABM defenses. The policy statement is unacceptable because it is clearly in conflict with the ABM Treaty, which forbids a multiple-site defense. This policy, therefore, is an anticipatory breach of the treaty. Russia has repeatedly and strenuously warned that taking this step will very likely stop it from ratifying START II, and it may very likely cause it to withdraw from START I and the Conventional Forces in Europe Treaty. Our colleagues should take these warnings seriously. Under the above mentioned treaties, Russia is going to destroy thousands of nuclear warheads that are aimed at the United States. In our estimation, it would be in the United States national security interests to have those warheads destroyed. Russia, to date, has been living up to those treaty obligations. What is absolutely unfathomable to us is why our colleagues insist on making this policy statement when all of the research and development activities

that are planned for the next year at least, and probably longer, will not violate the treaty at all. In other words, we can have our cake and eat it too--if we develop the system, without declaring that we are developing it, Russia will continue to destroy its bombs. If our colleagues are worried about the pace of development, then they should lock into law particular timetables for particular tests and milestones. They should not, however, gratuitously announce to the world that they intend to develop a system that clearly violates the treaty as it now stands.

The next element of the Levin amendment is related to theater missile defenses. The language on the demarcation point would be stricken because that is an issue that should be negotiated by the President. We ask our colleagues what would be their reaction if the Russian Duma were to announce that it had decided the demarcation point that would apply to the treaty? We imagine they would be rightly upset. We imagine they may point out that there are two parties to that treaty, and that one party has no right to declare unilaterally the meaning of that treaty on a very contentious issue. Our colleagues would of course denounce such an action by the Russian Duma, and the Russian Duma will certainly denounce this language if it is signed into law. Congress cannot bind Russia by law; this matter must be negotiated. This practical reality was understood by our Founding Fathers when they gave the President the responsibility to negotiate treaties. Some Senators have suggested that the President intends to go around Congress by effectively writing a new treaty and not bringing it up for ratification; this charge is hypothetical, but their solution, to violate the Constitution by infringing on his duty to conduct foreign policy, is anything but hypothetical.

The final section that would be stricken by the Levin amendment is the most blatantly unconstitutional of all. That section would prohibit the President from expending any funds on any efforts to alter or to clarify the ABM Treaty in any way until Congress had conducted a review. Negotiations on any treaty are never conducted as an end in themselves--they are always conducted with the intent of agreeing to alterations or clarifications. The President is constitutionally required to negotiate treaties. Congress cannot limit that duty by passing a law.

The Levin amendment has not been offered to hinder the purposes of the Missile Defense Act. Instead, it has been offered to limit the collateral damage that it will cause, and to make it constitutional. All Senators, both those favoring and opposing missile defenses, should agree to this amendment.